

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO : 8012 of 1995

Between:

Raguda Siva Sankar Prasad,
Mechanic, A.P.S.R.T.C.,
Gajuwaka Visakhapatnam.

..... PETITIONER

AND

1. The Depot Manager, A.P.S.R.T.C.,
Gajuwaka Depot, Visakhapatnam.
2. The Industrial Tribunal-cum-Labour Court,
rep.by its Chairman, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to call for the records relating to I.D.No.139/92, Dt.17/11/1994 on the file of the Labour Court-cum-Industrial Tribunal, Visakhapatnam and quash the same as arbitrary and illegal by way of issue a writ of Certiorari or any other appropriate writ, with a consequential direction to the respondents to reinstate the petitioner into service and continuing the petitioner with back wages and other attendance benefits.

Counsel for the Petitioner: MR.K.PURUSHOTHAM

Counsel for the Respondent Nos.1&2: MS.B.G.UMADEVI (SC FOR A.P.S.R.T.C.)

The Court made the following :

ORDER:

This writ petition is filed by the workman being aggrieved by the Award dated 17.11.1994 in I.D.No.139 of 1992 passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam, wherein the claim petition filed by the petitioner/workman under Section 2-A(2) of the Industrial Disputes Act, 1947 was dismissed, confirming the punishment imposed by the management dismissing him from service.

2. The petitioner was appointed as a Cleaner in Andhra Pradesh State Road Transport Corporation with effect from 02.10.1976. Further, he was promoted as a Mechanic in the year 1979. According to the petitioner, he had put in an unblemished service of about 12 years. While so, a charge sheet was issued alleging that the petitioner committed theft of Corporation property of fuel injection pump bearing No.WVD.2305 fitted to the engine No.170207 during the night shift on 23/24-08-1986 in the garage. Further, he had also stolen the Corporation property of an alternator bearing No.3440 during the night shift on 11.09.1986 when it was fitted to the parked vehicle in the garage. Further, it was alleged that he had unauthorisedly entered into the Tyres section and stolen the new tube of 900 x 20 size on 23/24.09.1986 and also one sponge sheet E2 from the garage of Gajuwaka depot. A regular departmental enquiry was conducted and the Enquiry Officer found the petitioner guilty of the charges. The Disciplinary Authority, after issuing a show

cause notice, passed final order of removal dated 07.10.1987.

3. Apart from this, the petitioner was also proceeded with criminally in C.C.No.751 of 1987 on the file of the II Additional Munsif Magistrate, Gajuwaka, Visakhapatnam District, which ended in acquittal on 16.05.1987. Aggrieved by the removal, the petitioner raised an industrial dispute by filing claim petition under Section 2-A(2) of the Industrial Disputes Act, 1947 before the Industrial Tribunal-cum-Labour Court, at Visakhapatnam.

4. It was the contention of the petitioner that the enquiry was not properly conducted and that he was not given full and fair opportunity to defend himself and even assuming that the misconduct was proved, the removal from service was disproportionate to that of the misconduct alleged against him.

5. The respondents/Management also filed a detailed counter affidavit before the Industrial Tribunal-cum-Labour Court, denying the allegations made by the petitioner.

6. Before the Industrial Tribunal-cum-Labour Court, none were examined on behalf of the Management or on behalf of the workman. However, Exs. M1 to M15 were marked on behalf of the Management. No document was marked on behalf of the workman/petitioner herein.

7. After a detailed consideration of the entire evidence on record, the Tribunal observed that in the departmental enquiry, all the concerned persons were examined and a finding was given by the Management. When a theft is committed by the workman belonging to the same department, it is not possible to get outside witnesses and direct witnesses also cannot be accepted. The evidence of the witnesses disclosed that on the date of the occurrences the petitioner was available at the concerned place where he can have access to the property. The management also stated that it has lost confidence on the workman and therefore, he cannot be

allowed to continue in office. Therefore, in the said circumstances, the Tribunal found that the material before it was sufficient to hold the petitioner guilty of misconduct alleged against him. While holding so, the Tribunal held that the punishment imposed by the management is justifiable and granted no relief in the claim petition filed by the workman and dismissed the same. Aggrieved by the same, this writ petition is filed.

8. The learned Counsel for the petitioner submits that assuming that the misconduct against the petitioner was proved, the dismissal of the petitioner from the service was not proportionate to that of the misconduct alleged against him and this was the first time after more than 12 years of clean service the petitioner was involved in such misconduct. Therefore, the Tribunal ought to have taken a lenient view and granted relief of reinstatement at least.

9. Per contra, the learned Counsel for the respondents contends that the Award of the Tribunal is a well reasoned one and does not call for interference of this Court under Article 226 of the Constitution of India.

10. In these circumstances, the only question that falls for consideration is, whether the punishment imposed by the management was proportionate to that of the misconduct alleged against the petitioner?

11. The learned Counsel for the respondents was asked to place the service record of the petitioner before this Court to ascertain as to what was his past record. The learned Counsel for the respondents placed the service record of the petitioner before this Court and absolutely there was nothing against him till 1987. This being the first offence and the petitioner had put in more than 12 years of service, while exercising its powers under Section 11-A of the Industrial Disputes Act, 1947, the Labour Court ought to have taken a lenient view in the claim petition, and at least directed reinstatement of the petitioner into service without any back wages and without any attendant benefits, but with continuity of service. In the peculiar

circumstances of the case, I am of the opinion that the punishment of removal from service is disproportionate, particularly since the past conduct of the petitioner was clean. Therefore, the award of the Labour Court is liable to be modified as under:

“In the result, the punishment of removal from service imposed by the Management is set aside and the management is directed to reinstate the petitioner/workman into service with continuity of service, but without any back wages and without any attendant benefits”.

12. The writ petition is allowed to the extent indicated above. No order as to costs.

C.V.RAMULU, J

Dated: 31st December, 2004.

Cs/TJS

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday, the Thirty first day of December, Two Thousand and Four.

ASSISTANT REGISTRAR

To

1. The Depot Manager, A.P.S.R.T.C., Gajuwaka Depot,
Visakhapatnam.
2. The Chairman, Industrial Tribunal-cum-Labour Court,

Visakhapatnam.

3. Two C.D.copies.